


RECORDATION NO. 29741 

APR 07 '11 -3 50 PM

**SURFACE TRANSPORTATION BOARD**

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April 7, 2011

Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423

Dear Section Chief:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Railcar Lease, dated as of March 31, 2011, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Keywell L.L.C.  
11900 South Cottage Grove Avenue  
Chicago, Illinois 60628

Lessee: Millis Industries, Inc.  
1372 Main Street  
Millis, Massachusetts 02054

Chief, Section of Administration  
April 7, 2011  
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A description of the railroad equipment covered by the enclosed document is:

10 coal gondola cars formerly within the series KEYX 5045 - KEYX 5110 and with reporting marks (but not road numbers) changed from KEYX to MIIX, as more particularly set forth in the equipment schedule attached to the document

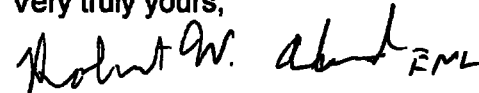
A short summary of the document to appear in the index is:

Railcar Lease.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", followed by the letters "FML" in a smaller, separate script.

Robert W. Alvord

RWA/bhs  
Enclosures

APR 07 '11 -3 50 PM

**RAILCAR LEASE**  
**SURFACE TRANSPORTATION BOARD**

THIS RAILCAR LEASE ("Lease") is made and entered into as of this 31<sup>st</sup> day of March, 2011, by and between Keywell L.L.C., an Illinois limited liability company ("Keywell"), and Millis Industries Inc., a Massachusetts corporation ("Millis").

**RECITALS:**

WHEREAS, Keywell desires to lease to Millis, and Millis desires to lease from Keywell, the railcars described on Exhibit A attached hereto (the "Railcars").

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**AGREEMENT:**

1. **Lease.** Keywell hereby leases to Millis, and Millis hereby leases from Keywell, the Railcars, on the terms and conditions contained herein.
2. **Term.** The term of this Lease shall commence on April 01, 2011 ("Commencement Date") and shall continue in full force and effect until July 01, 2015 (the "Termination Date") (such term being referred to as the "Term"), unless otherwise terminated as herein provided.
3. **Shipping.** Millis shall be solely responsible for the arrangement of the preparation, disassembly or reassembly, pick-up, transport and delivery of the Railcars at Millis's sole expense and risk. On the date hereof, Keywell will request that the Railcars be switched out to interchange under its current storage agreement. All risk of loss for the Railcars shall be transferred to Millis immediately upon the Railcars being switched out to interchange.
4. **Rent.** Millis shall pay rent for the Railcars in equal monthly installments of \$3,500, which such rent shall be paid in advance on the first day of each month during the Term, at such place as Keywell may designate from time to time. Notwithstanding the foregoing, the final monthly installment due on July 01, 2015 shall be \$4,000.
5. **Use.** Millis shall use the Railcars in a careful and proper manner and in the manner expressly intended for such Railcars and shall comply with and conform to all Federal, state and local laws, ordinances and regulations, and all industry standards, in any way relating to the possession, use, storage or maintenance of the Railcars. Promptly following the date hereof, Millis shall cause the identifying marks on the Railcars to be changed to its marks and numbers, and shall promptly notify Keywell of such marks and numbers. Millis shall ensure that the Railcars remain so marked throughout the term of this Lease. No lettering or marking of any kind shall otherwise be placed upon or removed from any of the Railcars by Millis without the prior written consent of Keywell. Following the Term, unless Millis exercises the Purchase

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Option pursuant to Section 18 below, the parties hereto shall cause the Railcars to be identified by such railcar numbers as Keywell shall specify.

6. Disclaimer of Warranty. MILLIS ACCEPTS THE RAILCARS "AS IS" AND WAIVES ANY CLAIM AGAINST KEYWELL FOR ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND KEYWELL EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. MILLIS HAS INSPECTED THE RAILCARS AND ACCEPTS THE RAILCARS WILLINGLY AND WITH FULL KNOWLEDGE "AS IS - WHERE IS", AND AS BETWEEN MILLIS AND KEYWELL, MILLIS ASSUMES ALL RISK ASSOCIATED WITH THE RAILCARS, THEIR POSSESSION, TRANSPORT, STORAGE OR OPERATION DURING THE TERM.

7. Repairs. Millis, at its own cost and expense, shall keep the Railcars in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the Railcars in good mechanical working order, and in conformance with all applicable industry standards. Millis shall reimburse Keywell for all charges imposed on Keywell by railroads for repairs performed by railroads on any Railcar.

8. Representations and Warranties of Millis. Millis represents and warrants to and covenants with Keywell that:

(a) this Lease has been duly executed and delivered by authorized officers or partners of Millis and constitutes a legal, valid and binding obligation of Millis enforceable in accordance with its terms;

(b) Millis has not and will not, directly or indirectly, create, incur or permit to exist any lien, encumbrance, mortgage, pledge, attachment or security interest on or with respect to the Railcars or this Lease (except those of persons claiming by, through or under Keywell); and

(c) the Railcars will be used solely in the conduct of Millis's business.

9. Loss and Damage.

(a) Millis hereby assumes and shall bear the entire risk of loss and damage to the Railcars from any and every cause whatsoever. No loss or damage to the Railcars or any part thereof shall impair any obligation of Millis under this Lease, which shall continue in full force and effect through the term of the Lease.

(b) In the event of loss or damage of any kind whatever to the Railcars, Millis shall, at Keywell's option: (i) place the same in good repair, condition and working order; (ii) replace the same with like equipment in good repair, condition and working order; or (iii) pay to Keywell the replacement cost of the Railcars.

10. Surrender. Subject to Section 18 hereof, upon the expiration or earlier termination of this Lease, Millis shall return the Railcars to Keywell empty, clean and free of residue, and in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Railcars at Millis's cost and expense to such place as Keywell shall specify. Upon surrender, if any Railcar cleaning is required, Millis shall bear the full cost of cleaning.

11. Insurance. Millis shall procure and continuously maintain and pay for: (a) all risk insurance against loss of and damage to the Railcars for not less than the full replacement value of the Railcars, naming Keywell as loss payee; and (b) such other insurance as Keywell may reasonably require with limits as reasonably approved by Keywell, naming Keywell as additional insured and a loss payee. Such insurance shall be in such form and with such company or companies as shall be reasonably acceptable to Keywell, shall provide at least thirty (30) days advance written notice to Keywell of any cancellation, change or modification, and shall provide primary coverage for the protection of Millis and Keywell without regard to any other coverage carried by Millis or Keywell protecting against similar risks. Millis shall provide Keywell with an original policy or certificate evidencing such insurance on the date hereof and at such other times as Keywell may request during the Term. Millis hereby appoints Keywell as Millis's attorney in fact with power and authority to do all things, including, but not limited to, making claims, receiving payments and endorsing documents, checks or drafts necessary or advisable to secure payments due under any policy of insurance required under this Lease.

12. Taxes and Charges. Millis shall keep the Railcars free and clear of all levies, liens and encumbrances. Millis, or Keywell at Millis's expense, shall report, pay and discharge when due (a) all license and registration fees, assessments, sales, use and property taxes, gross receipts, taxes arising out of receipts from use or operation of the Railcars, and other taxes, fees and governmental charges similar or dissimilar to the foregoing, together with any penalties or interest thereon, imposed by any state, federal or local government or any agency, or department thereof, upon the Railcars or the purchase, use, operation or leasing of the Railcars or otherwise in any manner with respect thereto and whether or not the same shall be assessed against or in the name of Keywell or Millis, and (b) any and all other charges, license fees, assessments, fines, levies, imposts, duties, tariffs, customs duties, switching charges, mileage equalization charges, empty movement charges, track storage, detention or demurrage charges, including penalties and interest thereon, levied or imposed by any domestic or foreign, federal, state or local government or taxing authority, railroad or other agency, imposed upon, or with respect to, any of the Railcars, this Lease, Millis or Keywell in connection with Millis's use of the Railcars.

13. Keywell's Payment. In case of failure of Millis to procure or maintain the insurance or to pay fees, assessments, charges and taxes, all as specified in this Lease, Keywell shall have the right, but shall not be obligated, to obtain such insurance, or pay said fees, assignments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to Keywell with the next installment of rent, and failure to repay the same shall carry with it the same consequences as failure to pay any installment of rent.

14. Limitation of Liability; Indemnify. Keywell shall not be responsible or liable for any damage to the Railcars or injury to any person or persons injured while operating the

Railcars or while the Railcars are being used by Millis, or resulting from acts, conduct or omissions on the part of Millis or of Millis's agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or party, nor shall Keywell be in any way responsible or liable in case of any accident or injury including death to any of Millis's servants, employees, agents, or to any person or persons that come in contact with the Railcars, and Millis agrees that it will not hold Keywell in any way responsible or liable therefor. In addition, Millis shall indemnify, defend and hold Keywell, its successors, assigns, agents, officers, managers, members and employees harmless from and against any claims, damages, losses, liabilities, demands, suits, judgments, causes of action, legal proceedings, whether civil or criminal, penalties, fines and other sanctions, reasonable attorneys' fees and expenses and other reasonable costs and expenses in connection therewith resulting from any claim made or asserted by a third party, entity or by any governmental agency arising out of, connected with, or resulting from any of the following:

(a) control or use of the Railcars by Millis or resulting, in any way, from the loading, unloading or transportation of Millis's products in or on the Railcars, regardless of the negligence of Millis, including, but not limited to, any claims relating to environmental laws or regulations;

(b) any negligence on the part of Millis or any of its agents, contractors, servants, employees, licensees or invitees;

(c) any accident, injury or damage to any person or property arising out of use or control of the Railcars; or

(d) any failure on the part of Millis to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease.

15. Default.

(a) Millis shall be in default of this Lease upon the occurrence of any one or more of the following (an "Event of Default"):

(i) The nonpayment by Millis of any rent or other monies owed by Millis to Keywell provided for herein within thirty (30) days after the same is due and payable;

(ii) The failure of Millis to observe, keep or perform any other provisions of this Lease required to be observed, kept or performed by Millis, and such default continues for fifteen (15) days after Keywell gives written notice to Millis;

(iii) The making of an assignment for the benefit of creditors or filing a petition in bankruptcy or for arrangement or reorganization of Millis or having such a petition filed against Millis if such petition is not dismissed or withdrawn within thirty (30) days;

(iv) The attachment of substantially all of the property of Millis or appointment of a receiver for Millis for substantially all of Millis's property;

(v) Millis becomes insolvent or otherwise ceases to do business as a going concern; or

(vi) any representation or warranty made by Millis herein is inaccurate or false in any material respect.

(b) Upon the occurrence of an Event of Default, Keywell shall have the right to exercise any one or more of the following remedies:

(i) To take possession of the Railcars, without demand or notice, wherever same may be located, without any court order or other process of law. Millis hereby waives any and all damages occasioned by such taking of possession;

(ii) To immediately terminate this Lease; and

(iii) To pursue any other remedy at law or in equity.

In addition to the foregoing, Millis shall pay Keywell's costs and expenses incurred by reason of Millis's breach or default which shall include, without limitation, costs and expenses of receiving or retaking possession of the Railcars, storing, holding, transporting, insuring, caring for, servicing, maintaining, repairing and renting such Railcars, and including reasonable legal fees and expenses for advice and legal services in any actions or proceedings which Keywell may commence or in which Keywell may appear or participate to exercise or enforce any rights or remedies or to protect or preserve any rights or interests, and in all reviews of and appeals from any such actions or proceedings. Notwithstanding any repossession or any other action which Keywell may take, Millis shall be and remain liable for the full performance of all obligations to be performed by it under this Lease. All of Keywell's remedies are cumulative, and may be exercised concurrently or separately.

16. Bankruptcy. Neither this Lease nor any interest therein is assignable or transferable by operation of law. If (a) Millis voluntarily enters into a reorganization, liquidation or bankruptcy proceeding, or has such proceeding brought against it involuntarily which such proceeding is not dismissed within thirty (30) days thereof; (b) Millis becomes insolvent or makes or attempts to make an assignment for the benefit of its creditors; (c) Millis has a receiver appointed for its assets, affairs or business; or (d) a writ of attachment or execution is levied on the Railcars and is not released or satisfied within ten (10) days thereafter, Keywell shall have and may exercise any one or more of the remedies set forth in Section 15(b) hereof; and this Lease shall, at the option of the Keywell, without notice, immediately terminate and shall not be treated as an asset of Millis after the exercise of said option.

17. Ownership. Subject to Section 18 hereof, the Railcars are, and shall at all times be and remain, the sole and exclusive property of Keywell; and Millis shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.



18. Purchase Option.

(a) Millis shall have the right and option (the "Purchase Option") to purchase all (but not less than all) of the Railcars at any time prior to the termination of this Lease by delivering written notice to Keywell (the "Exercise Notice"). The Exercise Notice must state a closing date no more than sixty (60) days after the date of the Exercise Notice. If Millis elects to exercise its Purchase Option, Keywell shall sell and assign the Railcars to Millis, which transaction shall be closed at Keywell's offices on the date specified in the Exercise Notice. The failure of Millis to deliver an Exercise Notice during the Term shall constitute a waiver of the Purchase Option. Notwithstanding any provision contained herein to the contrary, the Purchase Option may not be exercised at any time during the existence of an Event of Default. The purchase price of the Railcars shall be the sum of any unpaid monthly rent expected to be paid over the remainder of the Term (the "Stipulated Value"). Upon expiration of the Term and payment of all rent due hereunder, Millis shall have the right to exercise the Purchase Option and purchase the Railcars for a price of \$1.00.

(b) At the closing of the purchase of the Railcars, (i) Keywell shall convey the Railcars to Millis by a general bill of sale and (ii) Millis shall deliver to Keywell the purchase price required to be paid for the Railcars, by cashier's or certified check.

19. Additional Documents. Millis hereby authorizes Keywell to make such filings as it deems necessary or appropriate to protect its interest in the Railcars, including, without limitation, financing statements pursuant to the Uniform Commercial Code and/or filings with the United States Surface Transportation Board. In addition, if Keywell so requests, Millis shall execute and deliver to Keywell such other documents as Keywell shall deem reasonably necessary or desirable for purposes of protecting the interest of Keywell in the Railcars.

20. Entire Agreement. This instrument constitutes the entire agreement between the parties on the subject matter hereof and it shall not be amended, altered or changed except by a further writing signed by the parties hereto.

21. Notices. All notices, offers or other communications required or permitted to be given pursuant to this Lease shall be in writing and shall be considered as properly given and received (a) when personally delivered, sent by facsimile with a confirmation of transmission, or sent by email with confirmation of transmission, (b) one day after being sent by a nationally recognized overnight courier with guaranteed next day delivery or (c) three (3) business days following mailing from within the United States by first class United States mail, postage prepaid, certified mail return receipt requested, to the following addresses:

If to Keywell: Keywell L.L.C.

11900 South Cottage Grove Avenue  
Chicago, Illinois 60628  
Attn: James Galen  
Telephone: (773)660-2060  
Facsimile: (773)660-2064

with a copy to: Patzik, Frank & Samotny Ltd.  
150 South Wacker Drive  
Suite 1500  
Chicago, Illinois 60606  
Attn: Steven M. Prebish, Esq.  
Facsimile: (312) 551-1101

If to Millis: Millis Industries Inc.  
1372 Main Street  
Millis, Massachusetts 02054  
Attn: Robert Valchuis

22. Assignment. Millis shall not assign this Lease or its interest in the Railcars without the prior written consent of Keywell. Millis acknowledges and agrees that Keywell may assign or transfer this Lease or Keywell's interest in any of the Railcars without notice to Millis. Millis acknowledges that any assignment or transfer by Keywell will not materially change Millis's duties or obligations under this Lease nor materially increase the burdens or risks imposed on Millis. Millis shall cooperate with Keywell in executing any documentation required by Keywell or any assignee of Keywell to effectuate any such assignment.

23. Governing Law. This Lease shall be construed in conformity with the laws of the State of Illinois, without regard to conflict of law provisions. The parties hereto agree that any dispute among or between them concerning this Lease or the Railcars shall be litigated either in the United States District Court for the Northern District of Illinois or in the Circuit Court of Cook County, Illinois. The prevailing party in any litigation in connection with this Lease shall be entitled to recover from the non-prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in connection with any such litigation.

24. Counterparts. This Lease may be executed in counterparts (including by facsimile and electronic PDF copy), each of which shall be an original, but all of which shall constitute one and the same instrument.

25. Waiver. No waiver by a party of a right or breach under this Lease shall be effective unless in writing and any such waiver shall not be deemed a waiver of any subsequent right or breach whether of a similar nature or otherwise.

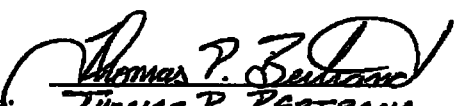
*[Execution Page Follows]*

IN WITNESS WHEREOF, each of the undersigned have caused this Lease to be executed by a duly authorized officer as of the day and year first above written.

KEYWELL:

KEYWELL L.L.C.

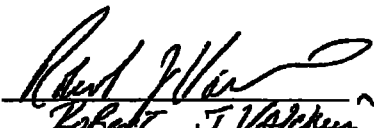
*I certify that I hold the title set forth below, that this Lease was signed on behalf of Keywell by authority of its Manager and that I acknowledge that the execution of the foregoing Lease was the free act and deed of Keywell. I further declare under penalty of perjury that the foregoing is true and correct.*

Signature:   
Print Name: THOMAS P. BERTRANA  
Title: EXECUTIVE VICE PRESIDENT

MILLIS:

MILLIS INDUSTRIES INC.

*I certify that I hold the title set forth below, that this Lease was signed on behalf of Millis by authority of its Board of Directors and that I acknowledge that the execution of this Lease was the free act and deed of the Millis. I further declare under penalty of perjury that the foregoing is true and correct.*

Signature:   
Print Name: Robert J. Valckun  
Title: President

## **EXHIBIT A**

### **Railcars**

Ten (10) Thrall-built 4000/cubic foot capacity railcars, 263,000 gross weight on rail limit, converted steel coal gondolas, identified as

<b><u>PRIOR CAR NUMBER</u></b>	<b><u>NEW CAR NUMBER</u></b>
KEYX 5045	MIIX 5045
KEYX 5046	MIIX 5046
KEYX 5052	MIIX 5052
KEYX 5056	MIIX 5056
KEYX 5058	MIIX 5058
KEYX 5070	MIIX 5070
KEYX 5091	MIIX 5091
KEYX 5096	MIIX 5096
KEYX 5098	MIIX 5098
KEYX 5110	MIIX 5110

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 4/7/11



\_\_\_\_\_  
Robert W. Alvord